

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

GUMARO BAEZ,

Defendant and Appellant.

H043022

(Monterey County
Super. Ct. No. SS141285)

Defendant Gumaro Baez is an inmate at Salinas Valley State Prison. On April 15, 2013, Gary Ramey, a correctional sergeant, conducted a search of defendant's person and cell. Ramey found a plastic object inside the tennis shoe that defendant was wearing. The object appeared to have been made from the handle of a cup that had been "flattened and sharpened to a tip." This "very hard piece of plastic" was between four and five inches long, had cardboard and paper "wrapped around it for the purposes of a handle," and had been "sharpened at one end" into an "awfully hard" point. The "sharpened tip" of the object was "approximately three-quarters to one inch in length." Ramey, who had a lot of experience with inmate-manufactured weapons, "classif[ied] this as a stabbing-type weapon." He had seen similar weapons inflict "life-threatening injuries" even though the object was only "as sharp as an ink pen."

Defendant was charged by information with possession of a dirk, dagger, or sharp instrument in a penal institution (Pen. Code, § 4502, subd. (a)). It was further alleged that he had suffered two prior strike convictions (Pen. Code, § 1170.12). The strike allegations were bifurcated at defendant's request. The only issue at trial was whether the object found in defendant's shoe was capable of inflicting great bodily injury.¹ A prosecution expert testified that the object could be used to inflict great bodily injury or death if there was "a stabbing-type motion" with "a sufficient amount of force behind it." Defendant's mistrial motion on various grounds was denied. The jury returned a guilty verdict.

Defendant waived his right to a jury trial on the strike allegations, and the court found the strike allegations true. Defendant's new trial motion on various grounds was denied, and his request that the court dismiss one of the strike findings was denied. The court imposed a prison sentence of 25 years to life consecutive to his current term of life without the possibility of parole. The court also imposed mandatory fees and fines. Defendant timely filed a notice of appeal.

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf but has failed to avail himself of the opportunity. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The judgment is affirmed.

¹ This was the second trial in this case. The first trial resulted in a guilty verdict and true findings, but jury misconduct led the court to grant defendant's new trial motion.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

People v. Baez
H043022